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ABSTRACT

This case study provides an analytical description of a grievance appeals process in higher education as it actually operates under a particular collective bargaining agreement. The scope of the study was purposely limited to provide a thorough description of one aspect of collective bargaining in higher education. Sixteen research questions were designed and answered concentrating on: number, flow, and categories of grievance appeals; establishment of management and employee rights; rationale for review decisions; personnel and technical relationships; governance issues; and management and union interviews. Results indicated that: (1) The grievance review officers, in accordance with contract provisions, considered procedural matters as the only acceptable basis for grievance. (2) Grievants and/or the union continued to appeal grievances for which precedents had already been established in previous reviews. (3) The power of the reviewing officers and arbitrators was substantially limited by the contract, the policies of the SUNY trustees, the rules and regulations of other state agencies, and by state law. (4) Both the union and/or grievants attempted in several instances to use the grievance procedures as a method of continuing the collective bargaining process. (Author/MJM)

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CONFLICT RESOLUTION THROUGH GRIEVANCE APPEALS UNDER THE STATE UNIVERSITY OF NEW YORK UNION CONTRACT[1]

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Dr. Ronald P. Satryb, Assistant Dean for Student Affairs, State University College, Plattsburgh, New York Paper Presented to The American Educational Research Association Conference, 1975

OBJECTIVES

The grievance procedure is the primary mechanism by which the parties to a collective bargaining agreement enforce a reasonable and just interpretation and administration of a union contract. A good grievance procedure is essential to a contract in public institutions of higher education, since the strike is not legal in most states.[2] Thus, the grievance mechanism is a primary insurance against misinterpretation and misuse of the negotiated contract.

This case study provides an analytical description of a grievance appeals process in higher education as it actually operates under a particular collective bargaining agreement. The scope of the study was purposely limited in order to provide a thorough description of one aspect of collective bargaining in higher education so that currently limited information and insight as to future implications of collective bargaining in the professional employee relations phase of higher education might be extended.

Sixteen research questions were designed and answered to complete this study.[3] The research questions were concentrated on the following areas: number, flow, and categories of grievance appeals; establishment of management and employee rights; rationale for review decisions; personal and technical relationships; governance issues, and management and union interviews. In addition, changes were suggested for the procedure within the contract.

STATEMENT OF THE PROBLEM

The problem was to discover, describe, and relate accurately how a grievance procedure beyond the campus level has functioned in a comprehensive higher education institution, and to identify (a) the basis for grievance review decisions, (b) the particular articles in the Agreement and/or Board of Trustees Policies that were in dispute, (c) the formal and informal procedures

that permitted resolution of the dispute. In addition, the investigation identified what changes in the grievance procedure each party to the Agreement would like to make and the reasons for these changes. In the final analysis the case study produced a narrative that should be illuminating for anyone attempting to write a new grievance procedure or to change an old one.

RESEARCH SETTING

The settings for this study were the State University of New York campuses that were included in the collective bargaining agreement that went into effect on July 1, 1971. The units included in the agreement were: the Central Office, four university centers, 14 colleges of arts and science, four agricultural and technical colleges, and three medical centers. Approximately 16,000 faculty and non-teaching professionals of the University are considered part of the negotiating unit at the present time.

All cases decided since the implementation of the contract, September 1, 1971 through September 1, 1973, were considered part of the analysis. The data for this study was obtained from the written records and transcripts of all grievances for the period of the study that had been appealed from the first step under the provisions of the SUNY Agreement.[4] The file for each individual grievance appeal was reviewed in the Office of the Assistant Vice Chancellor for Employee Relations for the State University of New York.

TREATMENT OF THE DATA

The purpose of the data analysis was to describe a definite range of patterns, and to attempt to associate certain elements of those patterns. In this context, the data required to answer the research questions were obtained primarily through a content analysis of the written decisions of the reviewing officers at each subsequent level of the grievance procedure. Kerlinger's content analysis methodology was used to develop a workable categorization system.[5] Categories were established from the research questions and the

content of the grievance files. The data important to the study that could not be easily categorized was classified under a miscellaneous category where appropriate.

Content analysis does not usually attempt to relate one variable to another. However, in this study, an explanation of the relationships between and within categories was partially accomplished through the Interview Schedule. The Interview Schedule was constructed after the content analysis was completed. This allowed the investigator to substantiate relationships that were suggested by the completed analysis. Interviews were conducted with both union and management representatives.

The specific content analysis methods for the categorization and classification of the available data are discussed below.

Each grievance appealed to Step 2 or higher is numbered sequentially at Step 2. Grievances appealed to Steps 3 and 4 refer to the sequential number assigned to each appeal at Step 2. Therefore, a simple process of counting determined totals within categories and numerical relationships between the different levels of the grievance procedure.

The total number of grievances appealed to each level was determined by the number of decisions rendered at each level. For the purposes of this study, a grievance was not considered as appealed to the next subsequent step of the procedure unless a review actually took place.

The primary source of the data analysis was the written review decision at Step 2. The type or category of grievance was usually stated in the first sentence of each review. Thus, the type or category of the grievance was stipulated by the hearing officer at this level and continued at subsequent levels. The total count within types and categories was greater than the total number of grievances appealed because some grievances covered more than one area.

The cases were then classified according to the institutional source of the appeal and the grievant(s) professional status within the institution. The institutional source was derived from the designation of the grievant's institution stated at the top of the review decision. The major classifications were university centers, colleges, central office, medical centers, contract colleges, and two-year agricultural and technical colleges. Class actions that involved more than one campus were not included in this tabulation. The grievant(s) professional status was also determined from the name and title stated at the top of the review decision. The designations used were non-teaching professional, instructor, assistant professor, associate professor, professor, class action, and SPA.[6] The latter two designations were necessary to the study since more than one grievant was involved in some of the grievances. SPA was involved in both class actions and the initiation of contract grievances as the primary grievant on the behalf of all of the bargaining unit.

The grievances appealed to each level were also counted according to the frequency of the following decisions by the reviewing officer: relief denied, relief granted, moot, remanded to a lower level of the procedure, or relief partially granted. The last category of action was necessary in the case of multiple grievance categories within a grievance. In some cases, relief was granted on one issue and denied on another.

The date on the review decision at Step 2 was used to determine the number of grievance appeals being processed each month. The resulting monthly totals were used to illustrate the numerical flow of grievances during the period of the study.

In most of the reviews, the reviewing officer stated the justification for the decision prior to the issuance of the relief-denied, granted, etc. statement. In some instances, the statement of justification was found in the body of the review decision. In many instances, direct quotes of specific

Articles of the Agreement or Board of Trustees Policy Articles were used as a basis for the decision and/or the grievance. The degree of frequency for the use of each article was tabulated as was the frequency with which no articles appeared as the basis for the review decision.

In some of the review decisions, management and employee rights were quoted as the rationale for a specific decision. These quotes were extracted from the grievance review and their frequency determined. The articulation of employee and management rights in grievance review decisions provide some indication of the parameters of the contract through grievance interpretations.

The materials (documents, transcripts, etc.) that were used by the appealing authority as a basis for the rendered decision were basically the same in all cases. These items were identified and exceptions noted.

Specific special circumstances were also identified and quoted from the written review decisions. Some of these identified the circumstances under which grievances were initiated at Step 2 rather than Step 1. A second area involved actions taken by the reviewing officer when new materials were introduced at subsequent levels of the grievance procedure. Finally, instances where the hearing officer lacked the authority to resolve the grievance were identified.

A number of the reviews were totally or partially concerned with local institutional governance. In reviews that reacted to local governance issues, the interpretations of the reviewing officer were extracted. These decisions provide some insight into how more traditional collegial procedures are handled in a legalistic contract structure. In most instances a direct quote was used in relation to the governance issue in question.

Finally, the number of grievances by category (issue being grieved) moving through the grievance procedure were counted. The derived percentages were used to attempt to identify the important issues by noting the flow of appeals. Also, the number and proportion flowing to Steps 3 and 4 were important to

determine since SPA and not the grievant determines appeals to these levels.

The analysis of the data allowed certain additional observations that may be of assistance to future investigators. The local campuses and the union kept incomplete records of grievances at Step 1. It is important that grievances be resolved at the lowest possible level. To what extent this is occurring can be determined at certain campuses, but not at others. Only at Step 2 and the subsequent steps of the grievance procedure were comprehensive formal data available.

Therefore, it appeared that both errors and learning experiences in contract administration were being duplicated on individual campuses with imperfect communications. It is important for the purposes of good contract administration and research that complete records meet s e minimal standards. The records should include at least the following: number of grievances, type or category of grievance, grievance decision and rationale, contract articles used, and a transcript or synopsis of the hearing. This information should be willingly shared with other institutions and individual researchers.

RESULTS

The analysis of records and transcripts suggests that:

(1) The grievance review officers, in accordance with the contract provisions, considered procedural matters as the only acceptable basis for grievance. This ruled out consideration of substantive issues. Therefore, the reviewing officer would insure that all local procedures for tenure evaluation were followed, but would not question the substantive decision made under the governance procedure.

(2) Grievants and/or the union continued to appeal grievances for which precedents had already been established in previous reviews. Interviews with representatives of faculty and administration indicated that this situation was caused by at least two factors: first, the union's need to continually inform members and potential members of their rights under the contract and to keep

them aware of grievance reviews and decisions; secondly, political rather than substantive considerations may have influenced the union to continue processing "non-winnable" grievances in order to gain public attention.

(3) The power of the reviewing officers and arbitrators was substantially limited by the contract, the Policies of the SUNY Trustees, the rules and regulations of other state agencies, and by state law. Legislatively delegated powers could be altered only through formal negotiations with the State, eventuating in the time-consuming process of legislative approval. As a result of this situation, the provisions of local campus governance procedures were the only alternative for the resolution of disputes falling outside of the purview of the reviewing officer.

(4) Both the union and/or grievants attempted in several instances to use the grievance procedure as a method of continuing the collective bargaining process. In all instances noted, the reviewing officers refused to go beyond what had already been negotiated at the bargaining table.

(5) The grievance procedure was used as the primary method of interpreting the terms of the collective bargaining agreement. (e.g., It was made quite clear by the reviewing officers that the local campus governance procedures were outside the purview of both the articles of the Agreement and the Policies and, therefore, not subject to interpretation by the grievance procedure).

(6) The written decisions at Step 2 provided more in depth discussion of the issues than did decisions at Step 3. A university official indicated that this resulted from an agreement between SUNY and the Governor's Office of Employee Relations (Step 3). Since Step 2 is an internal University activity, the reviewing officers, representing the highest level of university management, were expected to discuss each case in a comprehensive manner for the purpose of identifying, clarifying and resolving the issues underlying each grievance in a manner that would guide future behavior of both union members and management.

This agreement also provides some indication that the Office of Employee Relations was reluctant to review matters of a traditional academic nature, such as governance, tenure, academic freedom, etc.

(7) Grievants and the reviewing officials appeared to be using different definitions of the term "grievance". Reviewing officials adhered rather strictly to the contract's definition, while grievants were willing to contest non-procedural issues such as personality conflicts with administrators or substantive judgments of colleagues sitting on personnel committees. This is some indication that local campus governance procedures did not provide a grievance mechanism that could satisfactorily resolve disputes of a personal or substantive nature.

(8) The reviewing officers at Step 2 tended to find in a few grievances some issues important enough to provide discussion and conclusions even though the grievance itself was untimely and could have been denied on that basis alone. The substance of the decisions by the reviewing officers indicate that this was done either to offer an interpretation of a specific article in order to set a precedent, or to establish that the basis for the grievance was not reviewable under the present procedure.

(9) Interpretations of the Agreement and the Board of Trustees Policies through the grievance appeals process have basically established the limits of the grievance procedure. (e.g., Professional judgment exercised by administrators, or faculty members acting as management (peer evaluation) cannot be questioned under the grievance procedures.)

(10) There were 37 identifiable types of grievances appealed to Step 2. Categories that had the largest number of grievances were those related directly to financial benefits and/or job security.

(11) The frequency of appeal by professional category indicated that 55 percent of the grievance appeals were from the non-teaching professional staff or non-tenured faculty members. Another 22 percent were class action grievances by the

union. Therefore, only 23 percent of the grievance appeals originated with tenured associate or full professors.

(12) Only 23 of the 135 grievances appealed above Step 1 were resolved fully or partially in favor of the grievant(s) at the subsequent steps. A surface evaluation would indicate that management was unwilling to resolve issues under the procedure. However, interviews with representatives of both union and management agreed that the grievance procedure was being used for other purposes by both the members of the bargaining unit and the union. (e.g., Personal problems, gripes, politics, etc.)

(13) The right to control resources, the campus educational missions, and the assignments of employees were specifically established as management rights by the grievance appeals process.

(14) Types of grievances most frequently appealed to Step 2 were: non-renewal of term appointments, continuing appointments, inaccurate salary payments, improper assignments, discrimination, non-promotion, and retrenchment.

(15) In one instance, the reviewing officer at Step 2 was willing to resolve an issue that was not grievable in the interest of fairness. How this decision may affect the broadening of the grievance procedure in the future is still unknown. (e.g., Could the union use the question of "fairness" to broaden the issues grievable under the procedure without additional negotiations?)

(16) During the period of the study, 135 grievances were appealed and reviewed at Step 2. Fifty-seven grievances were appealed and reviewed at Step 3. Nine grievances proceeded to arbitration hearings at Step 4.

(17) Of the 135 grievances appealed to Step 2, 47 were initiated at the university centers, and 70 at the four-year colleges of arts and science. The university centers had the largest numbers of appeals per campus (11.8), and the four-year colleges were second (5). The other averages were: central office - 2; two-year agricultural and technical colleges - .8, and medical centers - .7. The average number of appeals per faculty member in the

institutional categories were: university centers - .015, four-year colleges - .017, two-year agricultural and technical colleges - .004, medical centers - .003, and central office - .015.

(18) The following actions were taken on the 135 grievances appealed to Step 2: relief granted - 7, relief denied - 114, remanded - 5, partially granted - 8, and moot - 1. Relief was granted for three grievances appealed to Step 3, and 54 were denied relief. Relief was denied for all nine grievances appealed to Step 4.

(19) Findings indicate that the number of appeals to Step 2 increased slowly as the procedure was put into effect in September 1971. January through July 1972 shows a substantial number of grievance appeals being processed each month. From August 1972 through August 1973 the flow of grievances remained at a lower level than the preceeding period. This latter time span was also a period of internal union turmoil.

(20) The most frequently used documents by the reviewing officers for the resolution of grievances were: appointment letters, personnel files, transcripts of Step 1 reviews, supporting letters from the grievant, supporting letters from campus sources other than the grievant, miscellaneous correspondence, departmental minutes, and external agency or governmental rulings.

(21) Seven grievances were initiated at Step 2 rather than Step 1. The use of Step 2 rather than Step 1 as the initial step for introduction of a grievance usually occurs in two situations. These situations were in class actions where more than one campus or individuals from more than one campus are involved in the grievance, and when the local unit lacks the authority to resolve the grievance.

(22) New materials were introduced at Step 2 in four of the grievance appeals reviewed at that level. In each case the reviewing officer at Step 2 either disallowed the materials from consideration, or remanded the grievance to Step 1 for a new review.

(23) Three grievances appealed to Step 2 could not be resolved at that level because of a lack of authority on the part of the reviewing officer. Two of the cases required action and approval only by the State Bureau of the Budget. In the other case the relief requested required legislative approval.

(24) Both management and the union indicated that they did not compromise to resolve grievances at Step 2. The management response stated that the Step 2 reviewing officer and the administration of the local campus did compromise to resolve certain grievances, but the union was not involved in these compromises.

(25) Management suggested the following changes in the grievance procedure: once precedents have been established at Step 2, similar cases could waive that step rather than going through another review; eliminate Step 3 and/or establish another sub-presidential step on the local campus, and extend the time limits for scheduling reviews and issuing responses. The union suggested the following changes in the grievance procedure: extend the time limits for filing grievances, and elimination of Step 3.

Lengthy interviews with union representatives, and later with university reviewing officers, revealed that this study had implication in two basic areas. First, the conclusions focused on selected technical matters that illustrated some key functions of the grievance procedure: as a means of clarifying the Articles of the Agreement, as a negotiating tool, as an avenue of relief and redress of alleged wrongs by the employee, and staffing problems for contract administration. Secondly, themes were identified that can be described as tests of power and authority under collective bargaining agreements in higher education. These themes include: acceptable subjects for the grievance procedure; management-employee, union faculty, and faculty-faculty conflict; the union role in restricting grievances, and the establishment of management and employee rights.

CONCLUSION

The management representative stated that the present contract is an experiment and that its final evolving model in this area of higher education will not be resolved for 10 years. The evolving model may never be resolved due to changing markets, personnel changes, changes in educational missions and structures, and changes in legislation. Although these changes may occur, there is much to be learned from the pioneers in collective bargaining in higher education. However, descriptive research and literature in this area is still recent and limited for practical use.

This study has pointed the way for more research in the area of grievances and collective bargaining in higher education. Specifically this study has indicated directly or by inference the need for further research in the following areas: effect of time limits on the functioning of a grievance procedure; employee reaction to grievance review decisions; staff training prior to grievance processing; the communication flow of grievance decisions to management and employees; predictors of future bargaining issues; political requirements; governance and union (collegial vs. union models), and union functioning in relation to status of institutions.

FOOTNOTES

1. The research for this paper is taken from the author's dissertation: "The Grievance Appeals Process Within the State University of New York: A Descriptive Analysis" Unpublished Dissertation, University of Virginia, June 1974.

2. Harold S. Roberts, Labor-Management Relations in the Public Service. Honolulu: University of Hawaii Press, 1970. p. 193

3. Satryb, Op. Cit., pp. 4-5.

4. The grievance procedure incorporated into the negotiated SUNY contract provided for informal discussion followed by four formal levels of grievance review and appeal. The informal step provided an opportunity for the parties to resolve their differences without the aid of formal review by a third party. If not successful, the faculty member, with or without union support, could submit a formal written grievance to the local campus president for administrative review and decision (Step 1). If not satisfied by the Step 1 decision, the grievant could appeal the president's decision to the Chancellor of the University (Step 2). Only the union could appeal the Chancellor's decision to the Director of the New York State Office of Employee Relations (Step 3). If the issue was still unresolved, the union could unilaterally move to binding arbitration (Step 4).

5. Fred N. Kerlinger, Foundations of Behavioral Research. New York: Holt, Rinehart and Winston, Inc., 1964. pp. 544-553

6. (SPA) Senate Professional Association, the union recognized by the State as the sole bargaining agent for the professional employees of the State University of New York.

7. "Political" indicates an attempt by the union to attract new members and indicate to the members of the bargaining unit that they were active on their behalf. The union may also have been attempting to establish issues for future contract negotiations by emphasizing certain concerns as to the effectiveness or lack of effectiveness of the grievance procedure.

8. Step 3 - The Office of Employee Relations is part of the Executive Branch of the State Of New York and external to the State University of New York.